

respective claims, you may sue the other party in the appropriate court to resolve them. With regard to any earnest money you may have paid, the real estate agent must retain it in an escrow account until you and the seller reach a written agreement for its disbursement or a court resolves the dispute. Alternatively, with proper notification to you and the seller, the agent may remit it to the clerk of court in the county where the property is located. When attorneys hold earnest money, they must hold or dispose of it in accordance with the rules of the North Carolina State Bar.



Q: The seller has accepted my offer but the resulting contract requires that certain things (loan approval, inspections) be done by a certain date. What happens if they are not completed by this date?

A: Generally, these “conditions” and “contingencies” must be performed by the dates specified in the contract or very soon thereafter, depending upon whether the contract states that “time is of the essence.” If time is of the essence, and you or the seller fail to perform by the stated deadline, the other party may terminate the contract. If the contract does not state that “time is of the essence” and, through no fault of your own, you are unable to complete the inspections by the deadline, but do so within a reasonable time, the seller must

still go forward with the transaction. Although the seller may be able to recover damages from you for your failure to perform by the stated date, the seller must still perform his or her obligations under the contract.

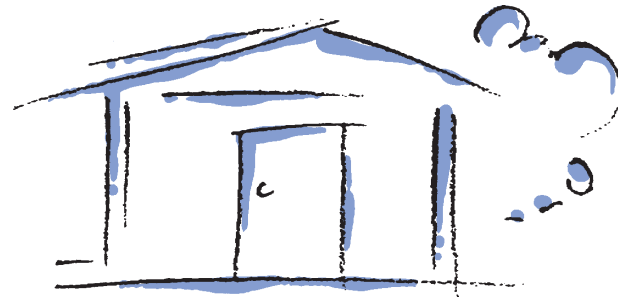
Q: Once I have entered into a contract with the seller, is there any way I can cancel it?

A: Not without the consent of the seller unless a particular law or special (non-standard) provision in your contract grants you a right of rescission. For example, the law grants a rescission right in the following limited circumstances:

- **Residential Property Disclosure Act.** At or before the time you make your offer in a residential transaction, the seller (whether or not a real estate agent is involved) must provide you a written form disclosing certain conditions and characteristics of the property. If the seller does not, any resulting contract is subject to a limited right of rescission — usually up to three calendar days from the time the contract is formed. You should be aware, however, that there are a number of exceptions to this requirement. Consequently, for application of this law to a particular situation, you should consult your attorney.



- **Lead Paint Disclosure.** If you are purchasing a residential building constructed before 1978, federal law requires sellers and their agents to provide you written information about the possible presence of lead paint and the associated hazards. If you are not given this information (and an inspection period) before entering into the purchase contract and have not signed a written waiver of your rights, you have a ten day inspection period during which you may be able to cancel the contract.



- **Condominiums.** If you are purchasing a new condominium from a person classified by law as a *developer*, you have seven days to rescind your purchase contract. When the seven day period begins or ends can vary from one transaction to another, but it usually begins when you are given the required *public offering statement*. During this period, all monies paid by you must be held in escrow by the developer. Immediately contact an attorney for advice if you have questions about your rescission rights. (For more information on condominiums, see the Commission’s brochure, “Questions and Answers on: Condominiums and Townhouses.”)

- **Timeshares.** If you are purchasing a new timeshare in North Carolina from a seller classified by law as a *developer of a timeshare project*, you have five days to cancel your purchase contract which you can

do by mail. If you are a resident of another state, you may also have additional rescission rights under the laws of your home state. The developer must hold all funds received from you in an escrow account for at least ten days. However, if you are purchasing the timeshare from another consumer or through a foreclosure sale, there is no rescission period or mandatory escrow of payments.

Q: Are there ways to purchase real estate other than using the standard offer to purchase and contract?

A: Yes. Here are a few:

- **Option to Purchase.** With an option to purchase, you have the right during the option period to buy property at an agreed upon price. For this right, you will pay *option money* to compensate the seller for taking the property off the market during the option period. Although subject to negotiation, option money is non-refundable and paid directly to the seller at the signing of the option. Depending upon the terms of the option agreement, you may or may not receive credit for some or all of your option money against the purchase price if you “exercise” your option. The standard “Offer to Purchase and Contract” form allows the buyer to pay an “Option Fee” in exchange for the right to terminate the contract for “any reason or no reason.” You should read any option contract carefully and consult your attorney if you have any questions.

- **Lease with Option.** When a lease is coupled with an option to purchase, you have the right to buy property at a set price while leasing it. There are no standard forms available for this purpose. Attempting to modify other standard forms for such use may result in a muddled or even unenforceable contract, and constitutes the unauthorized practice

of law when performed by real estate agents. Since these transactions may be riskier than a conventional purchase, you should consult your attorney before entering such agreements.

- **Lease-Purchase.** In lease-purchase transactions, you occupy property as a tenant but agree to purchase it at a future date. There is no standard lease-purchase form available, so you are again advised to consult your attorney.

- **Installment Land Sale.** In an installment land sale (also known as a *contract for deed*), title remains with the seller while you make payments to the seller. Usually, the contract allows you to possess and use the property while making payments but such terms are not legally required. If you are in possession of the property and default on your payments, the seller can sue you to regain possession of it and is generally entitled to retain all the money you paid under the contract.

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Questions and Answers on:

OFFER AND ACCEPTANCE

